

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD E. CHRISTENSON
and GARWIN MCNEILUS

Appeal No. 1999-1753
Application No. 08/515,815

ON BRIEF

Before CALVERT, COHEN, and STAAB, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 7-9, 13 and 22-24, all the claims currently pending.

Appellants' invention pertains to an improvement in the loading of refuse collecting and hauling vehicles. An understanding of the invention can be derived from a reading

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of exemplary claim 22, which is reproduced in the appendix to appellants' brief.

The references of record relied upon by the examiner in support of the rejections are:

Dutton	3,796,331	Mar. 12, 1974
Stedman	3,954,194	May 4, 1976
Bay-Schmith	4,091,943	May 30, 1978
Richards	4,983,092	Jan. 8, 1991
Holtom	5,391,039	Feb. 21, 1995

The following rejections under 35 U.S.C. § 103 are before us for review:

(A) claims 7, 9, 22 and 23, unpatentable over Stedman in view of Dutton and Holtom;

(B) claims 8 and 13, unpatentable over Stedman in view of Dutton and Holtom, and further in view of Bay-Schmith; and

(C) claim 24, unpatentable over Stedman in view of Dutton and Holtom, and further in view of Richards.

Reference is made to appellants' brief and reply brief (Paper Nos. 21 and 23) and to the second final rejection and examiner's answer (Paper Nos. 16 and 22) for the respective positions of appellants and the examiner regarding the merits of these rejections.

Opinion

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Considering first the § 103 rejection of claim 22, the sole independent claim on appeal, claim 22 is directed to a side loading refuse vehicle comprising: (a) a truck body enclosing a material receiving volume, (b) a charging hopper having a top opening mountable forward of the truck body, (c) a mechanized swivel mount mechanism fixed adjacent one side of the charging hopper adapted for angular displacement in a first generally horizontal plane, (d) a mechanized articulated arm attached at one end to the swivel mount, the arm being operable between stowed, extended, lift, and dumping positions, and (e) a mechanized grabber means connected to a free end of the articulated arm for grasping, lifting, tipping and releasing a container, and including means to control the angular positioning relationship between the free end of the arm and the mechanized grabber means.

Stedman, the primary reference in each of the examiner's rejections, pertains to a material grasping apparatus for use in connection with a refuse collecting and hauling vehicle. The grasping apparatus 20 is connected to a free end of an articulated arm 18, and manipulates the grasping apparatus so that it may deposit refuse material into a charging hopper 16.

Of particular interest to Stedman is the provision of a grasping apparatus that is especially adapted for grasping and moving irregular shaped, fragile material such as refuse packed in plastic bags (abstract). To this end, the grasping apparatus of Stedman may include flexible, resilient, deformable retaining elements in the form of strap 70 of elastomeric material (Figure 4), spring 80 (Figure 5), or a combination of both straps and springs (Figure 6), for grasping plastic bag containers without rupturing the containers. Stedman's grasping mechanism is in the form of a grapple attached to the free end of the articulated arm by a pivot pin 35 so as to depend therefrom under the influence of gravity (column 3, lines 20-22). Among the findings made by the examiner in rejecting the claims on appeal, the examiner determined that Stedman lacked a mechanized grabber means for grasping, lifting, tipping and releasing a container as called for in paragraph (e) of claim 22. The examiner cited Holtom for its showing of a mechanized grabber means of the type called for in the claim, and concluded that it would have been obvious to replace the grasping mechanism of Stedman with the grabber means of Holtom. We do not agree.

The entire thrust of Stedman is the provision of a mechanism adapted for grasping and moving irregularly shaped, fragile material such as refuse in plastic bags (column 1, lines 33-38). To this end, a highly specialized grasping mechanism is provided having flexible, deformable, resilient jaws that are substantially unbacked so that they may deform to the shape of the plastic bag as the jaws are closed around thereabout (column 1, lines 48-57). It would not have been obvious to one of ordinary skill in the art to replace the grasping mechanism of Stedman with the mechanized grabber means of Holtom because it would be completely contrary to Stedman's objective and make Stedman's device unsuitable for its intended purpose. *Ex parte Rosenfeld*, 130 USPQ 113, 115 (Bd. App. 1961). Moreover, the examiner's proposed combination would involve not merely a straightforward substitution of one grasping means for another, but would entail a substantial reworking of the interface between the articulated arm and the grasping means of Stedman to ensure that the substituted grabber means may "tip" the container as

called for in paragraph (e) of claim 22¹, as well as a reworking of the manner in which the articulated arm of Stedman moves in order to fully utilize the grabber means of Holtom in the manner contemplated by that reference (see Figures 1-4 of Holtom). From our perspective, the only suggestion for combining selected pieces from the Stedman and Holtom references together in a manner that would yield the claimed apparatus is found in the luxury of hindsight accorded one who first viewed appellants' disclosure. This, of course, is not a proper basis for a rejection. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

The Dutton reference additionally relied upon by the examiner does not cure the above noted deficiencies of Stedman and Holtom. Accordingly, we shall not sustain the standing § 103 rejection of claim 22, or claims 7, 9 and 23 that depend therefrom.

We have also reviewed the Bay-Schmith reference additionally cited against claim 8 and 13, and the Richards

¹Note that the grasping apparatus of Stedman is merely suspended under the influence of gravity from the free end of the arm by pivot pin 36.

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reference additionally cited against claim 24, but find nothing therein that makes up for the deficiencies of Stedman and Holtom noted above. Hence, the standing § 103 rejection of these dependent claims also cannot be sustained.

Remand

Pursuant to 37 CFR § 1.196(a) and MPEP § 1211, this application is remanded to the examiner for consideration of the follow matter.

The appealed claims are directed to a side loading refuse vehicle having, inter alia, a mechanized swivel mount mechanism fixed adjacent one side of a charging hopper adapted for angular displacement in a horizontal plane, a mechanized articulated arm attached at one end to the swivel mount, and a mechanized grabber means connected to a free end of the articulated arm for grasping, lifting, tipping and releasing a container. Holtom discloses a side loading refuse vehicle having an articulated arm assembly 13, and a mechanized grabber means 18 connected to a free end of the articulated arm for grasping, lifting, tipping and releasing a container. US Patent 5,330,308 to Armando, of record, discloses a side loading refuse vehicle having an articulated arm mounted for

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angular displacement in a horizontal plane (see Figure 2, elements 10, 12 and column 14-22), with a mechanized grabber means 43, 44 for grasping, lifting, tipping and releasing a container mounted on the free end of the arm. Several other references of record disclose articulated arms mounted to vehicles for angular movement in a horizontal plane, and a grabber means for grasping, lifting, tipping and releasing a container mounted on the free end of the arm. See, for example, US Patent 3,762,586 to Updike and European patent document EP 0 695 702 A1, each cited by appellants in Information Disclosure Statements and indicated on the PTO-1449 forms accompanying those Statements as having been considered by the examiner.

The examiner should collectively assess the teachings of these references and any other prior art of which the examiner may be aware to ascertain whether they would have been suggestive to one having ordinary skill in the art of the subject matter of any of the pending claims, and to take whatever action is deemed appropriate.

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Summary

The standing § 103 rejections of the appealed claims are reversed.

This application is remanded to the examiner for consideration of the matter set forth above.

The decision of the examiner is reversed.

Reversed and Remanded

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IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	APPEALS
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)	
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DECISION: REVERSED/REMANDED

Send Reference(s): Yes No
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s):

Prepared: March 25, 2002

Draft Final

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PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT